

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8852 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SURAT (HAZIRA) KAMDAR

KARMACHARI UNION

Versus

ESSAR STEEL LTD.  
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Appearance:

MR PC MASTER for Petitioners

NANAVATI ASSOCIATES for Respondent No. 1

MR RD DAVE for Respondent No. 2  
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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 05/11/98

ORAL JUDGEMENT

Heard the learned Advocates.

The petitioner Surat (Hazira) Kamdar Karmachari Union seeks direction to restrain the respondent No.1, Essar Steel Ltd.-respondent No.2-Ashish Engineers, respondent No.3 Balaji Industrial Services from

implementing the transfer order issued by contractor-respondents No.2 and 3 in respect of five workmen. It is submitted that the impugned order of transfer is malafide, as the petitioners have filed Special Civil Applications No.7227/97 and 7037/97 against the State of Gujarat to make reference to State Advisory Contract Labour Board, for abolition of contract labour, as regards the activities of the employees where names are given in the petition. It is also submitted that with a view to paralyse the activities of the Union, they had suspended 12 active members of the Union and the respondents No.2 and 3 had transferred 5 workmen, which led to filing to Special Civil Application No. 7027/97 and C.A. No.7865/98 in which a direction was given that the concerned employee shall continue to work with principal employer. Thus, the say of the petitioner-Union is that the impugned orders of transfer is illegal, as it amounts to unfair labour practice.

2. In my view, this petition cannot be entertained for the reason that no writ can be issued to respondents No.1-a private company and respondents No.2 and 3 contractors, as neither of them are "State" or "other authority" within the meaning of Article 12 of the Constitution of India. Mr P C Master, learned Advocate appearing for the petitioner has placed reliance on a decision of the Apex Court in the case of Air India Statutory corporation v. United Labour Union, reported in AIR 1997 SC 645. He submits that the present writ petition is maintainable. He has invited my attention to para 59 of the judgment, wherein it is observed that arm of the Court is long enough to reach injustice wherever it is found. The learned Advocate also read before me para 60 of the said judgment. I have read the judgment carefully. In the said case, since Air India Statutory Corporation, a statutory authority under the International Airport Authority of India Act, 1971, did not abolish the contract system and failed to enforce Notifications of the Government of India, the Union filed writ petition seeking direction against the said Corporation to enforce forthwith the aforesaid Notification abolishing the contract labour system in the said services and to ask the Corporation to absorb all the employees doing the cleaning, sweeping, dusting, washing and washing of the building or owned or occupied by the appellant-establishment, with effect from the respective dates of their joining as contract labour in the appellant's establishment with all consequential rights/monetary benefits. This case has absolutely no application to the facts of the present case. It is well settled by the catena of decisions of the Apex Court and

various High Courts including this High Court that a writ can be issued only to a 'State' or 'Authority' within the meaning of Article 12 of the Constitution of India. In view of this, the present Special Civil Application cannot be entertained under Article 226 of the Constitution of India, and the same is accordingly rejected.

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msp.